

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2186 of 2015
IN
Civil Writ Jurisdiction Case No. 10834 of 2006**

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1. The Union of India through the Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, Eastern Railway, Fairie Place, 17, N.S. Road, Kolkata-700001.
3. The Divisional Railway Manager, East Central Railway, Danapur.
4. The Goods Shed Supervisor, East Central Railway, Danapur.
5. The Chief Way Clerk, Eastern Railway, Asansol Railway Yard (Eastern Coalfield Ltd.) Saligram Area, Asansol, West Bengal

.... Appellant/s

Versus

1. M/s Jindal Steel & Power Ltd., Jindal Centre, 12, Bhikaji Cama Place, New Delhi-110066 (A company registered under the Indian Companies Act) through Shri Rakesh Jindal, Senior General Manager (Commercial)

.... Respondent/s

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Appearance :

For the Appellant/s : S.D.Sanjay, Addl. S.G.
Mr. Bijoy Kumar Sinha
For the Respondent/s : Mr. Birendra Kumar
Mr Shailendra Kumar

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 24-04-2017

Heard learned Additional Solicitor General representing the Railways, counsel for the private respondent and perused the order dated 31.07.2014, which is subject matter of appeal before this Court.

There is long history behind the present round of litigation. The history is that the private company used the services of the racks of the Railways for transportation for which there was an obligation to pay the freight charges. When the consignment was being moved between Chhattisgarh to Patna, the same was weighed



on a weighing machine at Asansol and it was found that more goods or raw materials was being transported than what was reflected in the consignment. Based on that excess carriage, a bill of Rs.17,21,325/- was raised against the company. Such a decision was challenged in a writ application, which was CWJC No.2323 of 2002. The learned Single Judge vide order dated 29.01.2004 quashed the demand order and direction was given to refund/adjust the payment against future consignment.

The appeal of the Railways against the order of the learned Single Judge was also dismissed vide order dated 15.3.2014 passed in LPA No.335 of 2004. However, there was an observation which reads :

“The only modification is that the amount which lies in deposit with the railways will be the subject matter of a deposit before the Railways’ Claims Tribunal or either parties filing their claims whatever they are. Upon the claim being adjudicated the amount in deposit with the Railways’ Claims Tribunal will be the subject matter of either refund or any other order after the dispute had been adjudicated by the Tribunal.”

Nothing happened between 2004 and 2006. The Railways decided to file a writ application because it was their case that it was for the respondent company which had to move the Railways’ Claims Tribunal against the claim since they had not deposited any money but only given bank guarantee which also had



lapsed. In other words, the adjudication was frustrated by clever ploy utilized by the respondent company and, therefore, it is the stand of the learned Additional Solicitor General that dismissal of the writ application by the learned Single Judge should be interfered with.

There seems to be omission on the part of the Railway authorities themselves in not pursuing the matter diligently or if there was any area of confusion or mischief being played by the respondent company, an appropriate modification/clarification could have been sought from the Division Bench instead of filing a writ application. A difficulty did arise for the learned Single Judge because he could not go behind the order previously adjudicated by a Single Judge and which was upheld by a Division Bench.

In view of the above, the Court is of the opinion that the learned Single Judge committed no error either of fact or law in dismissing the writ application vide order dated 31.07.2014.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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